

No. 76-1596

Supreme Court, U. S.
FILED
SEP 22 1977

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1977

UNITED STATES OF AMERICA, PETITIONER

v.

JOHN MAURO AND JOHN FUSCO

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT**

**SUPPLEMENTAL MEMORANDUM FOR THE
UNITED STATES**

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Since the United States filed its petition for certiorari in this case, the conflict among the circuits on the question presented has deepened.¹ In recent decisions, the First Circuit and the Sixth Circuit have disagreed with the position of the Second Circuit in this case and have held that a writ of *habeas corpus ad prosequendum* is not a "detainer" making applicable the provisions of the Interstate Agreement on Detainers Act. *United States*

¹The question presented, as set forth in our petition (Pet. 2), is: "Whether a writ of *habeas corpus ad prosequendum* issued by a federal court to state authorities, directing the production of a state prisoner for trial on federal criminal charges, constitutes a detainer making applicable the terms and conditions of the Interstate Agreement on Detainers Act."

v. *Kenaar*, C.A. 1, No. 77-1014, decided July 7, 1977, petition for a writ of certiorari pending, No. 77-206; *Ridgeway v. United States*, C.A. 6, No. 76-2145, decided July 13, 1977, petition for a writ of certiorari pending, No. 77-5252. The Third Circuit, in two closely-divided *en banc* decisions, has taken the opposite view, aligning itself with the Second Circuit. *United States v. Sorrell*, No. 76-1647, decided August 22, 1977; *United States v. Thompson*, No. 76-1976, decided August 22, 1977. These decisions further demonstrate the need for a definitive ruling by this Court on this important issue.

For the reasons discussed in this memorandum and in our petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

SEPTEMBER 1977.